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No. 97-612

FILED
NOV 6 1997
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In The

Supreme Court of the United States

October Term, 1997

ANNE ARUNDEL COUNTY, MARYLAND,

Petitioner,

vs.

PARKER ANDREWS, JOSEPH N. BURROWS, LINDA G. FINNELLE, MICHAEL F. GILLIGAN, LEROY JONAS, JR., RICHARD F. MAYER, JOSEPH J. McCANN, VERONICA MIXTER, JOSEPH H. NOVOTNY, EMOGENE N. PRICE, DENISE RANKIN, ADRIAN G. TEEL, FRANCIS J. ZYLWITIS,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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STATEMENT OF THE CASE

A. The petition ignores the full factual background behind the increase in pension benefits for County appointed and elected officials, and the County's retroactive reduction or withdrawal of those benefits.

In early 1989, the administration of Anne Arundel County Executive O. James Lighthizer was approaching the last year of its statutorily imposed two-term limit. Mr. Lighthizer recognized that appointed County officials, who served at the pleasure of the County Executive, were prone to finding new employment during the waning days of his tenure. In order to complete his extensive legislative and administrative program and in order to discourage the departure of key appointed personnel, Mr. Lighthizer directed his Chief Administrative Officer and his Personnel Officer to come up with a manner of inducing the appointed officials to stay in their positions. (JA 271). He anticipated that such inducement would be in the pension area. (JA 273). The Chief Administrative Officer and Personnel Officer came up with the concept for portions of Bill No. 36-89 that dealt with the County Retirement Plan for Appointed and Elected Officials (the "A&E Plan"), which made the receipt of significant additional benefits dependent upon the official remaining in service at least another year, until July 1, 1990.

To the knowledge of the Personnel Officer, no bill had ever before been submitted to the Anne Arundel County Council that had an effective date significantly in the future, and this bill's effective date was more than a year in the future (JA 275). Bill No. 36-89 was made applicable only to those officials who retired more than one year later to induce appointed officials to remain in service during the ending days of the Lighthizer administration. It worked; the officials largely remained. (JA 276). The bill ended up benefitting 82 persons.

Before drafting Bill No. 36-89, the Lighthizer administration made sure that the County could afford the increased cost of the benefits to be conferred (JA 272), and Mr. Lighthizer, who did not benefit by one cent by the passage of the legislation (JA 274), was satisfied that it was financially responsible. (JA 272). The economy generally and the economy of the County in particular were then in excellent condition. (JA 270). In 1989, Anne Arundel County had a budget surplus of between $40,000,000 and $50,000,000. (JA 270-71). In fact, at least since the mid-1960's and through 1994 at least, the County never had a budget deficit, and, on top of its annual surplus, the County kept a $10,000,000 "rainy day fund," to cover unbudgeted contingencies. (JA 281).

Bill No. 36-89 reduced the normal retirement age for A&E Plan participants from 60 to 50, and increased the annual benefit accrual rate for those officials from 2% to 2 1/2% of final earnings for the first 20 years of credited service. The increase in the benefit formula served to make A&E Plan benefits equal to those benefits available to police, firefighters and correctional officers under their respective retirement plans, as had been the case before those Plans' benefits were increased. The latter plans covered approximately 1,200 employees.

All of the Respondents in this case were officials who participated in the A&E Plan and who retired on or after July 1, 1990, either at age 50 or after completing 16 years of service, with more than five years of credited service with the County. Therefore, pursuant to the A&E Plan, as amended by Bill No. 36-89, the Respondents became vested in their right to receive the pension benefits under the Plan on the date of their respective retirements. Further, every Respondent except one (who is not yet eligible) is already receiving retirement benefits under the Plan.

Through the late 1980's, the A&E Plan was over 100% funded. Around that time, however, the Plan began to become increasingly underfunded. By 1991, for example, the Plan was underfunded by $2,354,153.[1] (JA 287). That underfunding resulted primarily from the mandatory statutory provisions regarding service transfers. Specifically, many of the new officials in the new administration of County Executive Robert R. Neall were appointed from the ranks of State government, and, under the Maryland Code, although they received full credit in the A&E Plan for their State service, no funds were transferred from the State Retirement System to this Plan to cover the cost of funding the retirement of these individuals.[2]

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1. It is not at all unusual for a County pension plan to be underfunded. (JA 282). For example, as the June 30, 1990 audited financial statement reflects, the County's General Employee (Classified) Plan was underfunded by $7,355,773, the Police Plan was underfunded by $11,735,201, and the Detention Center Plan was underfunded by $1,484,209. (JA 287). Underfunding is not unusual, and hardly connotes the desperation that the County suggests. In fact, upon information and belief, in 1989 the Maryland State Retirement Fund was underfunded by almost $6 billion.

2. The County Auditor of 29 years estimated that these transfers alone immediately contributed approximately $4.5 million to the underfunding of the A&E Plan. (JA 284-85).

At the time of the hearing on Bill No. 36-89 in 1989, the testimony was that the changes to the A&E Plan made by that ordinance would result in an annual cost of approximately $275,000. JA 125 provides the Valuation Results for the A&E Plan as of 1991. Specific reference is made to the fact that the cost of funding the A&E Plan had increased from $626,765, before consideration of the impact of Bill No. 36-89, to $810,589, after consideration of that ordinance's impact (a difference of approximately $183,824). In other words, the actual cost of Bill No. 36-89, as determined by the Plan actuaries after the Lighthizer administration was over, was *less* than estimated, and quite obviously, not the primary cause of the substantial "underfunding" asserted by the County.

In addition, in 1991 Mr. Neall and the Anne Arundel County Council proposed and enacted legislation to allow very substantial increases in the salaries of their new appointed officials. (JA 28, 85). Bill No. 4-91, one of the first ordinances passed in the Neall administration, increased the base salaries of Neall Administration appointees from 115% of base to 135% of base (JA 277-78), an increase of over 17%. The reason for the increase was that in comparison with State appointed officials, even considering the retirement benefits under the A&E Plan, County appointed officials were *underpaid*. (JA 277-80). These actions, in concert, resulted in the greatest proportion of A&E Plan underfunding. (JA 282-86).

After the underfunding of the A&E Plan became a political issue, then County Executive Neall, the Pension Oversight Commission, and the County Council all sought guidance as to the legality of contemplated retroactive legislative changes to the A&E Plan.

On October 18, 1993, Piper & Marbury, an eminent Baltimore law firm, issued a 51-page opinion letter to Mr. Neall, the then County Executive. The Piper & Marbury opinion letter concluded that legislation such as here at issue, to retroactively reduce pension benefits, would be illegal. (JA 182-232). On November 12, 1993, Steptoe & Johnson, an eminent Washington, D.C. law firm, issued an opinion letter to the Chairman of the Pension Oversight Commission, and concluded that a court would likely find that the proposed abrogation of the County's pension obligation would be illegal. (JA 233-242). On April 21, 1994, the Anne Arundel Deputy County Attorney issued his opinion that "the 'reserved power' of the County Council does not include the right to make retroactive reductions in benefits under the [A&E Plan], or to divest participants of benefits which have already accrued."[3] (JA 243-54).

3. On December 30, 1993, the Maryland State Attorney General (Cont'd)

On September 18, 1995, the County Council introduced Bill No. 74-95. Although the Pension Oversight Commission unanimously recommended *against* the passage of Bill No. 74-95, that ordinance was passed and signed into law by the County Executive on November 15, 1995. In short, Bill No. 74-95 operated retroactively to repeal the changes made by Bill No. 36-89, by, *inter alia*, increasing the normal retirement date to the earlier of age 60 or completion of 16 years of service and decreasing the benefit formula for appointed officials from 2 1/2% to 2% of final average earnings for each year of credited service not in excess of 20 years. The impact of Bill No. 74-95 was to cause immediate termination of some Respondents' retirement benefits then being received and relied upon by those Respondents, and to decrease significantly the pension payments of the other Respondents.

The retroactivity of Bill No. 74-95 was the same fault determined to be illegal in the opinion letters of Piper & Marbury, Steptoe & Johnson, and the Deputy County Attorney of Anne Arundel County. Bill No. 74-95 is the legislation that is the subject of this Petition; it is the legislation that was determined by the Circuit Court for Anne Arundel County to be likely illegal when it entered the ex parte and interlocutory injunctive relief against the implementation of the law (JA 65-66), and determined by the District Court and the Fourth Circuit to be an illegal retroactive reduction of retirement benefits in violation of the Contract Clause.

(Cont'd)
issued a letter to Delegate Joan Cadden, which letter was incomplete and included attenuated analyses, but concluded that retroactive amendment was legal. (JA 172-79). The Attorney General letter was specifically *not* an opinion of the Attorney General, and is not accorded the dignity of such an opinion. (JA 255-60). The County Attorney's 1994 opinion properly referred to the Attorney General's letter as an "informal letter of advice," and gave that informal letter the limited credit it deserved. (JA 247).

B. The petition misrepresents the alleged "misconduct" by County appointed and elected officials.

Leaving aside the adjectives and hyperbole, the "facts" asserted as misconduct by the County are inaccurate or, in some cases, not the acts of elected or appointed officials.

Concerning the enactment of Bill No. 36-89, the County suggests that pre-enactment advertising violated the Maryland Constitution (Petition at 6, 19), as if this evidences some premeditated malfeasance. The County fails to advise this Court that as of that time, most legislation passed by the County Council arguably violated the Maryland Constitution because until 1995, the County was misreading the requirements of the Maryland Constitution. *See Schaeffer v. Anne Arundel County*, 338 Md. 75, 656 A.2d 751 (1995). The advertising of Bill No. 36-89 was done no differently than other County ordinances, and the method of advertising was defended by the County as proper until 1995. *Id.*

The County suggests that there was some wrongful failure to convene a meeting of the Pension Oversight Commission. (Petition at 6, 19). However, nothing governing the actions of that Commission required it to act after a meeting. In this instance, the Chairman of the Commission asked that its available members be polled via telephone. (JA 109-10, 151-52, 155-56). The idea to poll members via telephone was entirely his, and not the suggestion or notion of any elected or appointed official of the County. (JA 109-10).

The County also suggests that the report on Bill No. 36-89's fiscal impact was wrongly withheld. (Petition at 7, 19). Not so. Indeed, the County Auditor did not forward to the County Council a letter relating that the Assistant County Auditor had insufficient information to form an opinion about the cost of

Bill No. 36-89, and the County insinuates that "a fair inference" is that the letter was not sent for an improper reason. There is nothing fair or accurate about the suggested inference; instead, what is clear is that the letter was not sent because by the time of the Council hearing the letter was already known to be inaccurate, as the correct information from the actuaries about the fiscal cost of the ordinance had actually been provided to the County Council. (JA 276).

In addition, the County suggests that the failure of "a formal report" to include the increased benefit accrual rate and reduced retirement age "suggest(s) complicity of numerous appointed and elected officials at the pinnacle of their power." (Petition at 7, 19). In fact, the report was prepared by the Plans' actuaries, not by any County officials, and suggests merely that they, the actuaries, made a human error, an error that impacted on nothing. Bill No. 36-89 had already been enacted.

Of course, even assuming the truth of all of the County's factual assertions, the opinions of the Fourth Circuit and the District Court were still correct.

REASONS FOR DENYING THE WRIT

The petition attempts to impose a new standard for Contract Clause analysis in this case, in direct contravention of established Federal and State law, and does not warrant review by this Court. The decision below was a plainly correct application of settled law, and no conflict among the circuits is even alleged.

I.

THE FOURTH CIRCUIT AND THE DISTRICT COURT PROPERLY APPLIED MARYLAND LAW ON POINT, WHICH LAW IS CLEAR, UNDISPUTED, AND DISPOSITIVE OF THE ENTIRE QUESTION PRESENTED.

For purposes of Contract Clause analysis, courts look to state law to determine whether a contract exists, and the law of the state in which the legislation was enacted is determinative. *Kestler v. Board of Trustees of No. Carolina Gov'tal Employees' Retirement Sys.*, 48 F.3d 800, 803 (4th Cir.), *cert. denied*, 116 S. Ct. 186 (1995) (citing *Baker v. Baltimore County*, 487 F. Supp. 461, 466-67 (D. Md. 1980), *aff'd*, 660 F.2d 488 (4th Cir. 1981)). In this case, the state is Maryland.

Under Maryland law, pension plans create contractual duties toward persons with vested rights under the plans. *Board of Trustees of the Employees' Retirement Sys. v. Mayor and City Council of Baltimore*, 317 Md. 72, 562 A.2d 720, 733 (1989), *cert. denied sub nom.*, *Lubman v. Mayor and City Council of Baltimore City*, 493 U.S. 1093 (1990); *see Davis v. Mayor and Alderman of City of Annapolis*, 98 Md. App. 707, 635 A.2d 36, 40 (1994); *City of Frederick v. Quinn*, 35 Md. App. 626, 371 A.2d 724, 726-27 (1977). More specifically, as the County concedes in its petition, a statutory pension plan for government employees creates contractual rights to pension benefits. (Petition at 14); *Quinn*, 371 A.2d at 726-27.

It is equally well established in Maryland that a public employee who has satisfied all conditions precedent to receipt of his or her retirement benefits may not have those benefits retroactively withdrawn by legislation. *Quinn*, 371 A.2d at 726-27; *Baker*, 487 F. Supp. at 468-69 (the City "would have no

more right to withdraw retroactively the pro rata pension benefits that had accrued than it could demand repayment of the salary the employees had earned and had been paid"); *Maryland State Teachers Ass'n, Inc. v. Hughes*, 594 F. Supp. 1353, 1363 n.6 (D. Md. 1984) (under State law "the State has no 'right to withdraw retroactively the pro rata benefits that [have] accrued,' but the State may modify prospectively the amount of benefits"; *Davis*, 635 A.2d at 40 ("[t]he rights which have accrued under the terminated plan may not be retrospectively withdrawn from [the employee]").

The County, in fact, conceded this point below, admitting that

> under Maryland law as explicated to date, the "reserved legislative power" to make modifications in a pension plan may not extend to eliminating benefits in which a participant has already vested, or which a participant otherwise has "earned by satisfactory service."

(Fourth Circuit Brief of Appellant at 37).

It is undisputed that the County imposed contractual obligations on itself and created contractual rights in favor of all officials who participated in the A&E Plan. It is undisputed that all of the Respondents are participants in the A&E Plan who not only have fulfilled the conditions necessary for retirement but also have retired from County service. And, all of the Respondents (except one, who is not yet eligible) had already begun to receive their retirement benefits under the Plan at the time of passage of Bill No. 74-95. It is equally undisputed that the County has endeavored to divest the Respondents of those vested benefits *retroactively* through Bill No. 74-95.[4]

4. The County disingenuously suggests that Bill No. 74-95 was (Cont'd)

Consequently, Maryland law strictly and unquestionably prohibits the County from seeking to do what it seeks to do through Bill No. 74-95. As the Maryland Court of Appeals has already determined with regard to the exact pension plan here at issue, the A&E Plan participants such as the Respondents "derived pension benefits which have accrued, become fully vested, paid to them, and which *cannot* now be diminished." *Schaeffer v. Anne Arundel County*, 338 Md. 75, 656 A.2d 751, 755 (1995) (emphasis added). Having two years ago sought exactly this result before Maryland's highest court, the County removed this case to the Federal District Court seeking exactly the opposite result: a decision that the benefits can be diminished retroactively. Apparently, the County is not concerned with principles of res judicata or judicial estoppel.

Maryland law is controlling and directly on point. Given Bill No. 74-95's retroactive repeal of the Respondents' vested and accrued pension benefits under the A&E Plan, there are no circumstances under which that ordinance could be held valid under Maryland law.

(Cont'd)
prospective in effect because it did not attempt to recoup benefits already paid. This argument ignores that Bill No. 74-95 retroactively reduced or withdrew the Respondents' retirement benefits that had already been vested, earned and accrued. Indeed, by its own terms, Bill No. 74-95 was intended to operate with retroactive effect. (App. 59a-60a: "the modifications enacted by this Ordinance . . . shall apply retroactively to all individuals who have retired before the effective date of this Ordinance . . .").

II.

THE COUNTY'S PETITION PROVIDES NO COMPELLING REASON FOR THIS COURT TO GRANT CERTIORARI.

The petition asks this Court to grant certiorari in order to provide guidance as to the "proper balance" between the Contract Clause's limitation on state action and the "necessarily reserved" power of a state to provide for the welfare of its citizens, hoping for the Court to make new law. In so doing, of course, the County completely ignores its concession in the lower federal courts of Maryland law on point. Instead, the County argues that this Court should overrule established Maryland law and confine this case to a constitutional balancing test, using as the fulcrum the County's ambiguous and never-before-recognized purpose of "the elimination of ill-gotten gains."[5] (Petition at 12). The County's argument is wrong on its face, and provides no compelling reason for this Court to grant the petition.

The County chiefly relies upon the general law of contracts in an attempt to demonstrate that Bill No. 36-89, which is not the ordinance originally attacked by the Respondents under the Contract Clause, somehow did not give rise to a contractual obligation to provide pension benefits to the Respondents. This argument makes no sense and should be accorded no weight, for two reasons.

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5. As detailed above, the legal issues of the existence of an enforceable contract and the protected status of vested retirement benefits of public employees have been well settled by the Maryland State courts adversely to the County. The County removed this case from the Circuit Court for Anne Arundel County to the U.S. District Court for the District of Maryland (JA 75-77), removing also the possibility of attempting to change clearly settled State law.

First, this case is *not* about whether Bill No. 36-89 was properly enacted. This is beyond question (and beyond the scope of this case): that ordinance is law. *Schaeffer v. Anne Arundel County* involved a direct challenge to the enactment of Bill No. 36-89.[6] 656 A.2d at 751. In *Schaeffer*, less than two years ago, the County *defended* the enactment of the Bill and the process by which it was advertised. The Maryland Court of Appeals adopted the County's position that the attack on the legislation was barred by laches, and held that case "exemplifies exactly the type of potential prejudice that laches is designed to prevent," because "[a]ll participants in either pension plan who were hired, retired or continued employment . . . were also prejudiced by appellants delay in bringing his claim." 656 A.2d at 755.

Bill No. 36-89 is the law of Anne Arundel County. Under Maryland law, it creates contract rights. As such, the Fourth Circuit and the District Court properly rejected the County's "novel theory" that Bill No. 36-89 did not give rise to contractual rights and obligations, thus justifying its retroactive repeal through Bill No. 74-95. (App. 24a).

Second, the County's notion that because it claims a few individuals may have violated a duty, none of the A&E Plan participants are entitled to their retirement benefits is nonsensical. The involved County officials, maybe three or four individuals, did only what the County Executive properly requested that they do. They did not propose Bill No. 36-89. They did not vote on that ordinance. They did not pass that ordinance. Nor did they sign that ordinance into law. Rather, those few involved in any way with this legislation were performing their jobs within the scope of their authority and to

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6. Respondent McCann intervened and participated in that case as a party defendant, on behalf of himself and other similarly situated Plan participants. That case involved both the A&E Plan and the general Employees' Plan.

the best of their ability. The remaining 95±% of A&E Plan participants had absolutely nothing to do with the proposal, passage, or enactment of legislation and nothing to do with pensions.

Significantly, at oral argument before the Fourth Circuit, the County acknowledged that there was no evidence of fraud or criminal conduct on the part of any of the Respondents or any other official of County government. Even if there were evidence of such misconduct (which the Respondents unequivocally deny), however, the notion of the County's seeking to punish the many for the alleged "misconduct" of the few is anathema that is unacceptable in our society. The County suggests that the acts of three or four individuals who implemented the plan of the County Executive, who himself did not benefit from that plan, are tantamount to a grand conspiracy of all elected and appointed officials, simply because it disagrees philosophically with the result, or because the additional benefits make an expedient election issue.

If the County wants to claim that a few people did something wrong, breached some duty, or ignored the public trust, it still cannot punish every participant in the system. As the Deputy County Attorney himself pointed out in his opinion letter to the Chairman of the County Council in April of 1994,

> any attempt to single out an official ["with policy responsibility for pension issues"] is likely to be futile, expensive, and a distraction from the things which *can* be done . . . [W]hat needs to be kept in mind is that each of these changes was effected by publicly-aired legislation enacted by the County Council . . .
>
> . . . [T]he concept of "fiduciary responsibility to act in the County's best interest" is not susceptible to the

> type of precise, legal application which would be necessary in order to form the basis for some type of targeted legislative action . . . I don't know how you decide in a legally-defensible manner that one official was more culpable of "presumed knowledge of the fiscal impact of pension legislation" than another.

(JA 250-51).

The County wants this Court to determine that Bill No. 36-89, which is not the legislation the Respondents have attacked under the Contract Clause, did not constitute a contract with any of the Plan participants because of the acts of only a few of the Plan participants. No case anywhere has ever so held. Again, government pension benefits in Maryland are deemed in the nature of contract rights. *See Board of Trustees*, 562 A.2d at 733; *Quinn*, 371 A.2d at 726-27. The law is *not* that the benefits are in the nature of contract rights only sometimes, if the government currently in power thinks that is the way they should be treated.

Of course, even if Maryland law did not prohibit the County from retroactively stripping the Respondents of their pension benefits under the A&E Plan, the Fourth Circuit and the District Court correctly recognized that the County still failed to demonstrate either that an incorrect Contract Clause standard was applied or that the County satisfied the existing standard such that Bill No. 74-95 would be deemed permissible.

After it has been determined that a contract has been impaired, it must determined "whether the state law has, in fact, operated as a substantial impairment of a contractual relationship." *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244 (1978). Then, "assuming there has been a substantial impairment of contract, it must be determined whether that

impairment is nonetheless permissible as a legitimate exercise of the state's sovereign powers." *Baltimore Teachers Union v. Mayor and City Council of Baltimore*, 6 F.3d 1012, 1015 (4th Cir. 1993), *cert. denied*, 114 S. Ct. 1127 (1994). Unlike with respect to state impairments of private contracts, deference to a legislative assessment of reasonableness and necessity involving public contracts is not appropriate "because the State's self-interest is at stake." *United States Trust Co. v. New Jersey*, 431 U.S. 1, 25-26 (1977).

There has never been a dispute in this case as to whether Bill No. 74-95's impairment of the Respondents' contractual right to pension benefits was substantial. The District Court expressly determined that it was substantial (App. 24a-26a), and the County has never argued otherwise at any level. Similarly, the District Court held that the County failed to demonstrate that Bill No. 74-95 was reasonable and necessary to serve an important public purpose.[7] (App. 26a-28a).

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7. The County argued below that its "important public purpose" in enacting Bill No. 74-95 was the restoration of the actuarial soundness of the A&E Plan. (App. 26a-27a). In fact, the A&E Plan was not actuarially unsound. Now, however, the County criticizes the District Court for applying that very argument to the test established by the courts for analyzing state action under the Contract Clause, complaining that the District Court "reduced the balancing test . . . to a purely economic analysis." (Petition at 12). In fact, the District Court correctly applied that test to the County's argument (such as it was), and determined that the County failed to make the requisite showings under the law.

For example, Bill No. 74-95 was utterly unnecessary not only because the County admitted that it is not and was not in any financial crisis or emergency (JA 39, 89, 399), but also because the District Court found that the County "failed to make a sufficient showing that the means which it has adopted to address its 'problem' is the least drastic available." (JA 398). The County elected not to address any alternatives that were

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The County does not even now argue that the established standards required to avoid violation of the Contract Clause have been met. Rather, the County argues for some new standard, which would allow the substantial impairment of contracts providing benefits for many people if one or two people act in a manner the new political party in power does not like. It has the color of politics, not law; it is bad in principle and likely worse in application. This proposed new, totally unprincipled and unreasonable "standard," is not now and cannot in the future be the law of this Land.

III.

THE COUNTY'S PETITION SHOULD BE DENIED.

Anne Arundel County's strained arguments to the contrary, the Fourth Circuit's per curiam, unreported opinion did not decide an important question of unsettled federal law. Nor has the Fourth Circuit decided an important federal question in a way that conflicts with relevant decisions of this Court or other Circuits. Rather, the Fourth Circuit properly upheld the District Court's cogent construction of the Contract Clause in a manner totally consistent with established Contract Clause precedent and state law.

(Cont'd)
suggested by the Respondents below, such as consolidating the A&E Plan and the County Employees' Retirement Plan, issuing pension liability funding bonds, or simply funding the A&E Plan from its cash surplus. (JA 398, n.11). And, Bill No. 74-95 was not reasonable because it narrowly targeted a specific group of employees and operated with a permanency that, if allowed to stand, would have profoundly impacted the Respondents for the rest of their lives, and beyond. (JA 35-37, 43-44, 70-72).

CONCLUSION

For the reasons set forth above, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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